

PATENT COOPERATION TREATY

Express Mail Mailing Label No.: EV668159383US

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

10 NOV 2005

To:

NABARRO NATHANSON
Lacon House
Theobald's Road
London WC1X 8RW
GRANDE BRETAGNE

PCT

MKB

NOTIFICATION OF TRANSMITTAL OF THE INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(PCT Rule 71.1)

Date of mailing
(day/month/year)

07.11.2005

Applicant's or agent's file reference
BHC/S3623-33

IMPORTANT NOTIFICATION

International application No.
PCT/GB2004/003403

International filing date (day/month/year)
05.08.2004

Priority date (day/month/year)
11.08.2003

Applicant

SPRECKELSEN MCGEOUGH LTD et al.

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary report on patentability and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.
4. **REMINDER**

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

Name and mailing address of the international
preliminary examining authority:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465

Authorized Officer

de Santiago Gomez, A

Tel. +49 89 2399-8224




PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference BHC/S3623-33	FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/GB2004/003403	International filing date (day/month/year) 05.08.2004	Priority date (day/month/year) 11.08.2003	
International Patent Classification (IPC) or national classification and IPC B65D51/20, B65D47/10			
Applicant SPRECKELSEN MCGEOUGH LTD et al.			
1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of 6 sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau a total of 16 sheets, as follows: <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input checked="" type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).			
4. This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the opinion <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application			
Date of submission of the demand 07.03.2005	Date of completion of this report 07.11.2005		
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Seegerer, H Telephone No. +49 89 2399-8201		



**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/003403

10/567891

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
 - ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-13 received on 10.03.2005 with letter of 07.03.2005

Claims, Numbers

1-19 received on 10.03.2005 with letter of 07.03.2005

Drawings, Sheets

1/5-5/5 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
 4. ☒ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - ☒ the description, pages 2 inter alia
 - ☒ the claims, Nos. 1
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/003403

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-19
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-19 (Rule 70.2(c) PCT)
Industrial applicability (IA)	Yes: Claims	1-19
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

V.1) Reference is made to the following documents:

- D1: GB-B-2 353 789 (SPRECKELSEN MCGEOUGH LTD) 15 January 2003 (2003-01-15)
- D2: GB-A-2 377 701 (SPRECKELSEN MCGEOUGH LTD) 22 January 2003 (2003-01-22)
- D3: US-A-4 815 618 (GACH PETER P) 28 March 1989 (1989-03-28)
- D4: EP-A-1 266 839 (PORTOLA PACKAGING LTD) 18 December 2002 (2002-12-18)
- D5: GB-A-2 151 579 (SNOW BRAND MILK PROD CO LTD; HOKKAI CAN) 24 July 1985 (1985-07-24)

V.2) Lack of inventive step

V.2.1) Article 34(2)(b) with Rule 70.2(c) PCT: the amendments filed with the letter dated 07.03.2005 comprise an amended independent claim 1 wherein the original term sealing "foil" is replaced by the term sealing "means" (generalization; remark: new dependent claim 11 now merely optionally defines the foil-type of the sealing means); since any basis for said generalization appears to be missing in the application as originally filed (cf. original claims as well as description being based on the term "foil"), the amended independent claim 1 filed with the letter dated 07.03.2005 introduces subject-matter which extends beyond the content of the application as filed, contrary to Article 34(2)(b) PCT (additional remark: the amended description filed with the letter dated 07.03.2005 also uses said generalized term sealing "means"; cf. amended description, page 2 inter alia). Therefore, this report is established as if said unallowable generalization had not been made (Rule 70.2(c) PCT); i.e. the examination is based on a rectified claim 1 defining a "closure comprising a spout ..., a pulling device and a foil ... (forming) a seal ...".

V.2.2) The present application does not meet the criteria of Article 33(1) PCT,

because the subject-matter of (rectified) independent product claim 1 does not involve an inventive step in the sense of Article 33(3) PCT.

Reasoning: Documents D2 and D3 which are cited by the applicant as well as the document D1 (cf. abstracts and figures) disclose closures according to the (rectified) preamble of claim 1, i.e. closures comprising a spout defining an opening closed by a removable plastic part (connection via frangible bridges) and a sealing foil (being connected with spout and removable part) wherein a conventional "pulling device ... (is) connected to the removable part by means of a leg" for tearing the sealing foil.

The subject-matter of claim 1 therefore differs from this known closure type according to D1-D3 in that "the leg (of the pulling device) is mounted such that it applies force on a peninsula of the removable part".

The problem to be solved by the present invention may therefore be regarded as to provide a foil sealed closure with opening device (removable part with pulling device) wherein the effort needed to open the closure is minimised.

The solution proposed in claim 1 of the present application (pulling device mounted to a peninsula portion of the removable part) does not appear to involve an inventive step (Article 33(3) PCT) in view of the teaching of D4 (cf. D4, figures 4 and 6 in combination with par. 0024) suggesting the provision of such a "peninsula"-type connection between pulling device and removable plastic part (cf. D4, fig.6, peninsula ref. 74 of plastic part ref. 56 defined by grooves ref. 66 being in direct connection with the pulling device ref. 58); i.e. even though being related to the peeling of a foil, D4 teaches to subdivide the plastic part and to provide a "peninsula" portion as claimed for foil sealed closures with opening device (removable part with pulling device) in order to prevent a dissipation of the pulling force and to assure the application of the pulling force on a predefined, comparatively small sector ("peninsula") of the plastic part that is attached to the sealing foil.

Consequently, in view of the teaching of D4, it would be obvious to the person skilled in the art to apply the feature "peninsula-structure of the removable plastic part" with corresponding effect to the tear-foil sealed spout-type closure according to document D1 (or D2 or D3), thereby arriving at the solution according to claim 1 (lack of inventive step, Article

33(3) PCT; suggested adaptation of D1 or D2 or D3 in view of the teaching of D4).

The same reasoning applies, mutatis mutandis, to the subject-matter of the second independent product claim 15 (defining a similar closure) and claim 18 (defining a system comprising said closure and a container body), which therefore are also considered not inventive.

The dependent claims do also not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step in view of the available prior art D1-D5, since said claims

- **define combinations of features which are covered by said suggested combination of D1 (or D2, D3) with D4 (cf. e.g. claim 12 defining a conventional foil seal, i.e. a foil which is "welded to a container closed by the closure") or since said claims**
- **define further design modifications concerning the provision of the peninsula portion which appear to come within the customary practice followed by persons skilled in the art (cf. e.g. claim 8 claiming a peninsula defined by slits being merely a design option in view of the groove-solution disclosed and suggested by D4).**

V.3) Further Comments

The second independent product claim 15 should have been omitted for reasons of clarity.